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OFFICE OF PETITIONS

In re Application of	:
Dyer et al.	:
Application No. 10/071,032	: DECISION GRANTING
Filed: 8 February, 2002	: PETITION
Attorney Dckt No. A0000425-01-CFP	:

This is a decision on the petition under 37 CFR 1.53(e) filed on 27 June, 2002, requesting that the above-identified application be accorded a filing date of 8 February, 2002, with Pages 259-268 of the specification (description and claims) as a part of the original disclosure.

The petition is **GRANTED**.

On 8 February, 2002, the application was filed.

On 4 June, 2002, the Office of Initial Patent Examination (OIPE) mailed a Notice to File Corrected Application Papers stating that the application had been accorded a filing date of 8 February, 2002, but that Pages 259-268 of the specification (description and claims) appeared to have been omitted from the application. Additionally a substitute specification in compliance with 37 CFR 1.52 was required.

In response, on 27 June, 2002, the present petition was filed. Petitioners argue that Pages 259-268 of the specification were filed on 8 February, 2002. In support, a copy of petitioners' postcard receipt was supplied with the present petition. The postcard receipt bears a USPTO "Office date" stamp dated 02/08/02 and the above-identified application number, identifies the application by first named inventor's name, invention title, and attorney docket number, and itemizes, *inter alia*, a specification on 212 pages, 44 claims on 57 pages, and an abstract of the

disclosure (1 page), resulting in a total of 270 pages. Petitioners also supplied a copy of Pages 259-268 containing claims.

A review of the official file reveals that Pages 1-258 and 269 of the specification (consisting of 211 pages of description, 57 pages of claims, and one (1) page of abstract) received on 8 February, 2002, are located therein. As the claims start on Page 212, it is obvious that the written description was contained on Pages 1-211 rather than Pages 1-212, and that the entire specification, including the claims and abstract, consisted of 269 rather than 270 pages. However, since the individual at the USPTO who compared petitioners' postcard to the items received found that the specification (including claims and abstract) as filed contained at least 269 pages, the evidence is persuasive that Pages 259-268 containing claims were among the application papers received on 8 February, 2002, but were subsequently misplaced in the U.S. Patent and Trademark Office. It is also noted that the postcard itemizes the filing of 44 claims, and that the application, including Pages 259-268, contains 44 claims. The application, including Pages 259-268 of the specification containing claims, is therefore entitled to a filing date of 8 February, 2002.

The Notice mailed on 4 June, 2002, is vacated to the extent that it states that Pages 259-268 of the specification (description and claims) appeared to have been omitted. As the petition was necessitated by an error on the part of the Office, the petition fee of \$130.00 will be credited to counsel's deposit account, No. 23-0455.

The application will be processed using Pages 1-258 and 269 of the specification, including claims, and abstract filed on 8 February, 2002, and the copy of Pages 259 to 268 of the specification supplied on 27 June, 2002, as a part of the original disclosure.

Receipt is acknowledged of the substitute specification filed on 27 June, 2002. The substitute specification is not considered part of the original disclosure and must be reviewed by the examiner for new matter.

The application is being returned to Initial Patent Examination Division for further processing with a filing date of 8 February, 2002, using the application papers filed on that date and the copy of Pages 259-268 supplied on 27 June, 2002. Initial Patent

Examination Division will review the substitute specification for compliance with 37 CFR 1.52.

Telephone inquiries concerning this matter may be directed to the undersigned at (703)308-6918.



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